

1 Robert W. Dickerson (State Bar No. 89,367)  
2 rwdickerson@jonesday.com  
3 Michael A. Tomasulo (State Bar No. 179,389)  
4 matomasulo@jonesday.com  
5 JONES DAY  
6 555 South Flower Street, Fiftieth Floor  
7 Los Angeles, CA 90071-2300  
8 Telephone: (213) 489-3939  
9 Facsimile: (213) 243-2539  
10 Attorneys for Plaintiff  
11 ACTIVISION PUBLISHING, INC.

12  
13 Kurt E. Wilson (State Bar No. 121,63)  
14 kwilson@smwb.com  
15 SWEENEY, MASON, WILSON &  
16 BOSOMWORTH  
17 983 University Avenue, Suite 104C  
18 Los Gatos, CA 95032-7637  
19 Telephone: (408) 356-3000  
20 Attorneys for Defendants  
21 DOUG KENNEDY AND REVERB  
22 COMMUNICATIONS, INC.  
23  
24

13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA  
15

16 ACTIVISION PUBLISHING, INC.,

17 Plaintiff,

18 v.

19 JOHN TAM, an individual, JAMIE  
20 YANG, an individual, COREY FONG,  
21 an individual, DOUG KENNEDY, an  
individual, HONG LIP YOW, an  
individual, RAYMOND YOW, an  
individual, REVERB  
22 COMMUNICATIONS, INC., a  
California corporation, and THE ANT  
COMMANDOS, INC., a California  
corporation,

23 Defendants.  
24  
25

Case No. C-07-3536 MEJ

**CASE MANAGEMENT  
STATEMENT**

Scheduling Conference set for  
September 13, 2007, at 10:00 a.m.

1 Plaintiff Activision Publishing, Inc. (“Activision”) and Defendants Doug  
 2 Kennedy and Reverb Communications, Inc., (collectively “Defendants”), by and  
 3 through their attorneys, hereby jointly report on the status of the case, pursuant to  
 4 the Court’s Order of August 20, 2007. To the extent that the issues overlap, the  
 5 parties refer to and expressly incorporate the Joint Report of Parties Pursuant to  
 6 Fed. R. Civ. P. 26(f), filed on April 10, 2007, a copy of which is attached hereto as  
 7 Exhibit A (“Joint Report”):

8 **I. Jurisdiction and Service.**

9 All defendants currently named in the case have been served. Defendants  
 10 John Tam, Jamie Yang, Corey Fong, Hong Lip Yow, Raymond Yow and The Ant  
 11 Commandos, Inc. have all settled with Activision. Jurisdiction is based on the  
 12 following:

- 13 • The first and second claims for relief are for copyright infringement, which  
 14 arises under 17 U.S.C. § 501, *et seq.*, and violation of Section 43(a) of the  
 15 Lanham Act, 15 U.S.C. § 1125(a). This court has original subject matter  
 16 jurisdiction pursuant to the provisions of 28 U.S.C. §§ 1331 and 1338(a) and  
 17 15 U.S.C. § 1121(a).
- 18 • The third claim for relief is for violation of the Computer Fraud and Abuse  
 19 Act, 18 U.S.C. § 1030, *et seq.* This court has original subject matter  
 20 jurisdiction over this claim pursuant to 18 U.S.C. § 1030(g).
- 21 • This Court has supplemental jurisdiction over Plaintiff’s fourth through  
 22 fourteenth causes of action under 28 U.S.C. § 1337(a). These claims are so  
 23 related to the other claims in this case over which this Court has original  
 24 jurisdiction that they form a part of the same case or controversy under  
 25 Article III of the United States Constitution.

26 **II. Facts:**

27 The parties refer to the Joint Report, Ex. A, which sets forth a summary of  
 28 the facts at issue in this case.

1       **III. Legal Issues**

2       Plaintiff contends that the following are the primary legal issues in the case:

3           • whether the Tam demo copied elements from the Guitar Hero game in  
4           violation of 17 U.S.C. §501;

5           • whether Defendants' conduct constitutes unfair competition in  
6           violation of 15 U.S.C. § 1125(a);

7           • whether the information used and/or disclosed in furtherance of the  
8           Lodestone business constitutes confidential or trade secret information  
9           in accordance with California common law or California Civil Code  
10          Section 3426;

11          • whether Defendants used or disclosed Activision confidential or trade  
12          secret information;

13          • whether Defendants participated in a conspiracy with the other named  
14          defendants in which Activision's computers were improperly accessed  
15          in violation of 18 U.S.C. § 1030(a)(4) and (a)(5)(B);

16          • whether Defendants participated in a conspiracy with the other named  
17          defendants in which Activision's computers were knowingly accessed  
18          without permission and files were copied to defraud Activision and  
19          wrongfully obtain its confidential and trade secret information; and

20          • whether the employment agreements with John Tam, Jamie Yang and  
21          Corey Fong were valid and whether Defendants induced breach of  
22          those contracts.

23           ///

24           ///

25           ///

26           ///

27           ///

28           ///

1           **IV. Motions**

2           The following motions have been previously filed and ruled upon:

Motion	Disposition of Motion
Plaintiff's <i>Ex Parte</i> Application for Temporary Restraining Order and for Leave to Proceed by Order to Show Cause as to Preliminary Injunction	<p>Stipulated as to Defendants Tam, Yang, Fong, Kennedy and Reverb; Granted as to Defendants R. Yow, H. Yow and The Ant Commandos;</p> <p>Additionally, stipulated preliminary injunctions were entered as to Defendants Tam, Yang, Fong, Kennedy and Reverb and the Court granted a preliminary injunction against The Ant Commandos, R. Yow and H. Yow</p>
Plaintiff's <i>Ex Parte</i> Application For Entry Of An Order To Preserve Evidence And For Expedited Discovery	Granted
Motion for Order Determining Good Faith Settlement Between Plaintiff and Defendants John Tam, Jamie Yang and Corey Fong and Barring of Future Claims	Denied
Motion for Order Determining Good Faith Settlement Between Plaintiff and Defendants The Ant Commandos, Hong Lip Yow and	Denied

Motion	Disposition of Motion
Raymond Yow	
Defendants The Ant Commandos, Hong Lip Yow and Raymond Yow, Doug Kennedy and Reverb Communications, Inc. Joint Motion to Continue Trial Date	Taken off calendar in view of case transfer

The parties anticipate the following motions to be filed:

By Activision:

- Motion to Amend Complaint – to add Tracie Snitker as a defendant
- Motion for Summary Judgment – on at least Activision's claims for intentional interference with contract, copyright infringement, breach of confidence and trade secret misappropriation
- Discovery Motions – to compel production of financial documents, such as tax returns

By Defendants:

- Defendants do not anticipate filing any motions at this time.

**V. Disclosures**

Both Activision and Defendants served Rule 26 disclosures. Activision contends that Defendants' disclosures were untimely and insufficient.

**VI. Amendment of Pleadings**

Activision expects to amend its Complaint to add Tracie Snitker as a defendant. Activision proposes November 1, 2007 as the deadline by which to amend the pleadings.

1      **VII. Evidence Preservation**

2           Activision has sent a communication to persons believed to have relevant  
 3 documents or files to the case requesting that they not destroy documents related to  
 4 the case. Reverb has notified its employees of this matter and instructed them to  
 5 preserve all documents and/or files relevant to the case.

6      **VIII. Discovery**

7           As between Activision and Defendants, the following discovery has been  
 8 served/taken:

- 9           • **Depositions:** Activision has taken the following partial depositions:  
 10              Defendant Doug Kennedy (2/2/07), Defendant John Tam (2/13/07),  
 11              Defendant Jamie Yang (2/15/07), Defendant Raymond Yow (2/21/07)  
 12              and Defendant Hong Lip Yow (2/22/07). Reverb has noticed three  
 13              30(b)(6) Depositions of Activision. In view of scheduling conflicts  
 14              and settlement negotiations, dates for those depositions have not been  
 15              agreed upon.
- 16           • **Written Discovery Served as Between Activision and Defendants  
 17              Reverb and Kennedy:**

19            DATE	20            DESCRIPTION OF WRITTEN DISCOVERY
20            01/24/07	Activision's Document Requests to Doug Kennedy and Reverb Communications Ex Parte Application for Expedited Discovery
21            05/02/07	Activision's First Set of Document Requests to Doug Kennedy (Nos. 1-143)
22            05/02/07	Activision's First Set of Document Requests to Reverb (Nos. 1- 143)
23            05/03/07	Document Subpoena to William Townsend, Ward of Young Ward Attorneys, Sonora, CA
24            05/03/07	Document Subpoena to Young Ward of Young Ward Attorneys, Sonora, CA
25            05/14/07	Reverb's First Set of Requests for Admission (Nos. 1-6)
26            05/14/07	Reverb's First Set of Document Requests (Nos. 1-7)

DATE	DESCRIPTION OF WRITTEN DISCOVERY
05/14/07	Reverb's First Set of Interrogatories to Activision (Nos. 1-17)
05/21/07	Activision's First Set of Interrogatories to Doug Kennedy (Nos. 1-12)
05/21/07	Activision's First Set of Requests for Admissions to Doug Kennedy (Nos. 1-323)
05/21/07	Activision's First Set of Requests for Admissions to Reverb (Nos. 1-323)
05/21/07	Activision's Second Set of Document Requests to Doug Kennedy (Nos. 144-147)
05/21/07	Activision's Second Set of Document Requests to Reverb (Nos. 144-154)
05/21/07	Activision's First Set of Interrogatories to Reverb (Nos. 1-12)
The parties propose the following discovery plan for the remainder of the case:	
Fact discovery cut-off: <u>December 31, 2007</u>	
Opening expert reports: <u>January 31, 2008</u>	
Rebuttal expert reports: <u>February 28, 2007</u>	
Expert discovery cut-off: <u>March 31, 2008</u>	
The parties also refer to the Joint Report, <u>Ex. A</u> , which sets forth additional agreements regarding discovery.	
<b>IX. <u>Class Actions</u></b>	
Not applicable	
<b>X. <u>Related Cases</u></b>	
Not applicable	

1       **XI. Relief**

2           Activision's Statement regarding relief:

3           As more specifically detailed in Activision's interrogatory response,  
 4 Kennedy and Reverb are jointly and severally liable for all of the damages caused  
 5 by all of the acts of all members of the conspiracy, regardless of the nature of and  
 6 specific harm caused by their individual actions.

7           Based on the acts of copyright infringement, Activision is entitled to  
 8 damages and profits or, in the alternative, statutory damages. Further, because  
 9 Kennedy and Reverb's actions show a conscious and affirmative disregard for  
 10 Activision's intellectual property rights in Guitar Hero™, they would be subject to  
 11 enhanced damages of \$150,000 per infringing act, or \$300,000. 17 U.S.C. § 504(c).  
 12 An award of attorneys' fees and costs is also justified for the defendants' conduct.  
 13 17 U.S.C. § 505.

14           Activision's unreleased Guitar Hero II™ software includes Activision's  
 15 confidential and trade secret information. Activision is entitled to actual damages  
 16 and unjust enrichment or a reasonable royalty for the misappropriation of the Guitar  
 17 Hero II™ software. Based on the discovery that has been conducted to date, and  
 18 based on licenses that Activision has negotiated, Activision would be entitled to a  
 19 royalty rate ranging up to 15%, with a minimum guarantee payment.

20           Kennedy and Reverb misappropriated confidential and trade secret  
 21 information aside from the unreleased Guitar Hero II™ software. Activision's  
 22 damages for this misappropriation include but are not limited to:

23           **-- Damages and unjust enrichment or a reasonable royalty for the**  
 24 **misappropriated information:** Because Kennedy and Reverb  
 25 misappropriated the idea and plans for a spin-off game from the Guitar  
 26 Hero™ franchise, which has been a top selling franchise, a reasonable royalty  
 27 would be extremely high, estimated to total in the millions of dollars.

1           **-- Damages associated with computer inspections necessitated by the**  
 2           **misappropriation:** To date, these costs are approximately \$32,150.

3           **-- Recruiting and replacement costs:** Activision has suffered at least  
 4           \$200,000 in damages in connection with recruiting and replacement costs.

5           **-- Other compensatory damages:** At least \$71,100

6           **-- Exemplary damages and attorney's fees.**

7           With respect to damages, California Penal Code §502(e)(1) provides for  
 8           compensatory damages which are, to date, \$32,150. Additionally, under CA. Penal  
 9           Code §502(e)(2), Activision is entitled to an award of its reasonable attorneys' fees.

10          Activision is entitled to recover all damages it suffered from Reverb and  
 11         Kennedy inducing the breach of the aforementioned contracts. Activision's  
 12         damages include:

13           **-- Damages associated with computer inspections necessitated by the**  
 14           **trade secret theft,** as previously detailed.

15           **-- Recruiting and replacement costs,** as previously detailed.

16           **-- Other compensatory damages,** as previously detailed.

17           **-- Punitive damages and attorneys' fees.**

19           Defendants' Statement regarding relief:

20          Reverb and Kennedy agree that if Activision establishes the existence of a  
 21         conspiracy, all of the co-conspirators may be found jointly and severally liable.

22          If Activision establishes that Reverb and/or Kennedy infringed its copyrights,  
 23         Activision may recover its actual damages and any profits gained by Reverb and/or  
 24         Kennedy. Alternatively, Activision may elect to receive statutory damages. Only if  
 25         Activision establishes that Reverb and/or Kennedy acted willfully could it be  
 26         entitled to enhanced statutory damages of \$150,000. 17 U.S.C. § 505. Based on  
 27         the fact that Reverb and Kennedy never willfully infringed any Activision

1 copyright, Activision should not recover its attorney's fees and costs even if it  
 2 establishes infringement. 17 U.S.C. § 505.

3 If Activision establishes that Reverb and/or Kennedy misappropriated its  
 4 trade secrets, Activision will be entitled to its actual damages and any unjust  
 5 enrichment of Reverb and Kennedy. Only if Activision's actual damages and  
 6 Reverb and Kennedy's unjust enrichment cannot be calculated is it entitled to a  
 7 reasonable royalty. Since Reverb and Kennedy never possessed, used or disclosed  
 8 any of Activision's trade secret information, Activision cannot recover anything by  
 9 way of a royalty even if such a remedy was appropriate.

10 If Activision can establish that Reverb and/or Kennedy wrongfully recruited  
 11 certain Activision employees thereby interfering with certain Activision contracts,  
 12 then Activision may recover its actual damages sustained thereby.

13 If Activision can establish Reverb and/or Kennedy's liability under  
 14 California Penal Code §502, it will be entitled to recover compensatory damages  
 15 and, in the Court's discretion, may be entitled to its reasonable attorneys' fees.

16 Activision has no basis for the awarding of punitive damages as against  
 17 Reverb and/or Kennedy.

## 18 **XII. Settlement and ADR**

19 The parties had a formal mediation on August 2, 2007. As late as yesterday,  
 20 the parties believed that they had finalized an agreement. A dispute arose as to a  
 21 requirement for the settlement, and the parties failed to enter into an agreement.

## 22 **XIII. Consent to Magistrate**

23 The parties consented to have the Magistrate Judge preside.

## 24 **XIV. Other References.**

25 This case is not suitable for other reference.

## 26 **XV. Narrowing of Issues**

27 The parties believe that some issues can be narrowed through summary  
 28 judgment motions. The parties do not request bifurcation.

1      **XVI. Expedited Schedule**

2            The parties believe that an expedited schedule should be considered, as long  
3 as it provides sufficient time for the completion of discovery.

4      **XVII. Trial**

5            The parties preliminarily estimate that the time required for trial will be  
6 approximately 7 court days. The parties agree that the trial will be by jury.

7      **XVIII. Disclosure of Non-party Interested Entities or Persons**

8            Activision previously filed a Notice of Interested Parties in accordance with  
9 Local Rule 7.1-1 of the Central District Local Rules. Additionally, Activision  
10 states that the following entities known to Activision have either: (i) a financial  
11 interest in the subject matter in controversy or in a party to the proceeding; or (ii)  
12 any other kind of interest that could be substantially affected by the outcome of the  
13 proceeding: Activision Publishing, Inc. and Activision, Inc.

14           Reverb and Kennedy filed a Notice of Interested Parties in accordance with  
15 Local Rule 7.1-1 of the Central District Local Rules. The Notice stated that Reverb  
16 and Kennedy are not aware of any other persons or entities that may have a  
17 financial or other interest in this matter other than the named parties.

18  
19      Dated:       September 6, 2007

Respectfully submitted,  
JONES DAY

20  
21      By:

22      Michael A. Tomasulo

23  
24      Attorneys for Plaintiff  
25      ACTIVISION PUBLISHING, INC.  
26  
27  
28

1 Dated: September 6, 2007

Respectfully submitted,  
SWEENEY, MASON, WILSON &  
BOSOMWORTH

4 By:   
5 Kurt E. Wilson  
Trevor Zink

6 Attorneys for Defendants  
7 DOUG KENNEDY AND REVERB  
8 COMMUNICATIONS, INC.

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

# EXHIBIT A

COPY

1 Robert W. Dickerson (State Bar No. 89,367)  
2 rwdickerson@jonesday.com  
3 JONES DAY  
4 555 South Flower Street, Fiftieth Floor  
5 Los Angeles, CA 90071-2300  
6 Telephone: (213) 489-3939  
7 Facsimile: (213) 243-2539  
8 Attorneys for Plaintiff  
9 ACTIVISION PUBLISHING, INC.

10 Richard F. Cauley (State Bar. No. 109,194)  
11 rcauley@WHGLawFirm.com  
12 WANG HARTMANN & GIBBS PC  
13 1301 Dove Street, Suite 1050  
14 Newport Beach, California 92660  
15 Telephone: (949) 833-8483  
16 Facsimile: (949) 833-2281  
17 Attorneys for Defendant  
18 JAMIE YANG

19 Michael A. Oswald, Esq. (State Bar No. 87,299)  
20 mao@oswald-yap.com  
21 OSWALD & YAP  
22 16148 Sand Canyon Avenue  
23 Irvine, California 92618  
24 Telephone: (949) 788-8900  
25 Facsimile: (949) 788-8980  
Attorneys for Defendants  
THE ANT COMMANDOS, INC., HONG LIP  
YOW AND RAYMOND YOW

26 Kurt E. Wilson (State Bar No. 121,63)  
27 kwilson@smwb.com  
28 SWEENEY, MASON, WILSON &  
BOSOMWORTH  
983 University Avenue, Suite 104C  
Los Gatos, CA 95032-7637  
Telephone: (408) 356-3000  
Attorneys for Defendants  
DOUG KENNEDY AND REVERB  
COMMUNICATIONS, INC.

CV07-004647A(Cx)

FILED

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

1 ACTIVISION PUBLISHING, INC.,

2 Plaintiff,

3 v.

4 JOHN TAM, an individual, JAMIE  
 5 YANG, an individual, COREY FONG,  
 an individual, DOUG KENNEDY, an  
 individual, HONG LIP YOW, an  
 individual, RAYMOND YOW, an  
 individual, REVERB  
 7 COMMUNICATIONS, INC., a  
 8 California corporation, and THE ANT  
 COMMANDOS, INC., a California  
 9 corporation,

10 Defendants.

Case No. CV-07-00464 PA (Ex)

**JOINT REPORT OF PARTIES  
 PURSUANT TO FED. R. CIV. P.  
 26(f)**

Scheduling Conference set for  
 April 23, 2007, at 10:30 a.m.

Honorable Percy Anderson

11

12 Plaintiff Activision Publishing, Inc. ("Activision") and Defendants Jamie  
 13 Yang, Doug Kennedy, Hong Lip Yow, Raymond Yow, Reverb Communications,  
 14 Inc., and The Ant Commandos, Inc. (collectively "Defendants"), by and through  
 15 their attorneys, hereby jointly report on the conference of parties and planning  
 16 meeting, held via telephone on March 29, 2007, pursuant to Fed. R. Civ. P. 26(f),  
 17 Local Rule 26-1, and this Court's Scheduling Meeting of Counsel (filed March 26,  
 18 2007):

19 **I. Nature and Basis of Claims and Defenses – Fed. R. Civ. P. 26(f)**

20 Plaintiff's statement: To provide a short synopsis of the principal issues in  
 21 the case, as set forth in its Complaint Activision claims that Defendants conspired  
 22 to steal Activision's confidential and trade secret information, infringe Activision's  
 23 copyrights and unfairly compete with Activision. Based on these improper acts,  
 24 Activision brought this action for copyright infringement, violation of Section 43(a)  
 25 of the Lanham Act, violation of the Computer Fraud and Abuse Act, violation of  
 26 California Penal Code § 502, misappropriation of trade secrets, misappropriation of  
 27 confidential information, breach of contract, breach of duty of loyalty and fiduciary  
 28

1 duty, interference with contractual relations, interference with prospective  
2 economic advantage, statutory and common law unfair competition and conversion.

3       The evidence collected thus far in this case shows that Defendants  
4 encouraged John Tam, Corey Fong and Jamie Yang (the “Former Employees”) to  
5 leave their employment with Activision. The correspondence between the  
6 Defendants also demonstrates that the Former Employees forwarded confidential  
7 and trade secret information to the other Defendants, and that the Former  
8 Employees were encouraged by the other Defendants to misappropriate  
9 Activision’s trade secrets for use in their new venture, Lodestone Entertainment,  
10 Inc.

11       Through Lodestone, Defendants planned to sell a video game (“Defendants’  
12 Game”) in competition with Activision’s award-winning rhythm based music  
13 games called Guitar Hero™ and Guitar Hero II™ (collectively the “Guitar Hero™  
14 franchise”). Tam, working with Fong, directed an Activision employee and  
15 Activision independent contractors to develop, at Activision’s expense, a demo of  
16 Defendants’ Game (the “Tam Demo”) for use by Defendants. Defendants  
17 reproduced, displayed, published, distributed, sold and/or promoted the Tam Demo  
18 without Activision’s authorization or consent and in violation of Activision’s  
19 copyrights in the audiovisual material associated with the Guitar Hero™ franchise.

20       Lodestone intended to target a confidential and proprietary Activision  
21 corporate opportunity for the Guitar Hero™ franchise involving a certain  
22 confidential third party that was known to Tam and Fong by virtue of their  
23 employment with Activision. As admitted by Tam and Fong in the Consent  
24 Judgment filed with this Court, Defendants intended to and did use the Tam Demo  
25 to solicit partners and funds for Lodestone, and the Defendants’ decision to target  
26 and/or partner with the third party was based on Activision’s confidential and trade  
27 secret information.

28

1       The case law is clear that each co-conspirator is liable for the acts of the  
2 conspiracy, including those of other co-conspirators in furtherance of the  
3 conspiracy, so each of the Defendants is jointly and severally liable for the whole.

4       Settlements have so far been reached with two of the defendants, resulting in,  
5 among other things, the entry of Consent Judgments and Permanent Injunctions as  
6 to them. All of the other Defendants except TAC (and its principals the Yows)  
7 have stipulated to Preliminary Injunctions.

8       Defendants Doug Kennedy and Reverb Communications' statement:

9       Defendant John Tam approached Reverb and Doug Kennedy with a proposal to  
10 start a company that would develop and market a variety of video games  
11 ("Lodestone"). For several months, Mr. Kennedy, The Ant Commandos ("TAC"),  
12 Mr. Tam, Corey Fong, and Jamie Yang investigated the possibility of starting  
13 Lodestone. The Former Employees repeatedly informed Mr. Kennedy that they  
14 were all very dissatisfied with Activision's corporate culture and intended to leave  
15 the company. Reverb and Mr. Kennedy never encouraged any of the Former  
16 Employees to leave Activision's employment, nor did anything said by Reverb  
17 and/or Mr. Kennedy contribute to any of the Former Employees' desire to leave  
18 Activision.

19       Reverb and/or Mr. Kennedy never asked or encouraged anyone to steal, use,  
20 and/or disclose any Activision confidential and/or trade secret information. Reverb  
21 and/or Mr. Kennedy never illegally received any Activision confidential and/or  
22 trade secret information. The demo disc Mr. Tam gave to TAC was developed by  
23 Mr. Tam from an open source software program called Stepmania. Reverb and/or  
24 Mr. Kennedy never received or saw the demo disc that allegedly contains  
25 Activision's confidential and/or trade secret information. The budget document  
26 sent to Mr. Kennedy that Activision claims contains confidential and/or trade secret  
27 information contains only information that is publicly available, was not seen by  
28

1 Reverb and/or Mr. Kennedy prior to this litigation, and was never used or disclosed  
 2 by Reverb and/or Mr. Kennedy at any time.

3 No one ever accepted Mr. Tam's proposal to start Lodestone, and Lodestone  
 4 never went beyond the investigative stage. Lodestone was never formed, never  
 5 employed anyone, never leased any office space, never owned any assets, never  
 6 developed any product, never had any customers, never received any funding, and  
 7 never did any business of any kind. Immediately after Activision notified Reverb  
 8 and Mr. Kennedy of its allegations against the Former Employees, Reverb and Mr.  
 9 Kennedy stopped all communications in furtherance of Lodestone. Reverb and Mr.  
 10 Kennedy quickly obtained counsel and immediately began fully cooperating with  
 11 Activision in its investigation. Reverb and Mr. Kennedy informally provided  
 12 Activision with all of the documents and information it requested, agreed to an  
 13 expedited deposition, and repeatedly assured Activision in unambiguous, written  
 14 statements that they never used or disclosed, and would never use or disclose, any  
 15 Activision information they received from the Former Employees.

16 Defendants claim that Activision cannot allege any damage that resulted  
 17 from any of Reverb's and/or Mr. Kennedy's actions. Reverb and/or Mr. Kennedy  
 18 never received, used, or disclosed any Activision confidential and/or trade secret  
 19 information. Even if Activision could establish that the Former Employees  
 20 provided Reverb and/or Mr. Kennedy with Activision's confidential, trade secret  
 21 information, Activision cannot establish any damage because Reverb and/or Mr.  
 22 Kennedy never used or disclosed any of the information. The well-established  
 23 California case law holds that misappropriation of a trade secret without "use or  
 24 disclosure" is insufficient to bring about liability on a defendant.

25 Defendants The Ant Commandos, Raymond Yow and Hong Yow's  
 26 statement: Defendant John Tam had been dissatisfied with his position at  
 27 RedOctane and Activision and in October 2006, approached Reverb and Doug  
 28 Kennedy with a proposal to develop and market a variety of video games

1 ("Lodestone"). For several months, Mr. Kennedy, The Ant Commandos ("TAC"),  
 2 Mr. Tam, Corey Fong, and Jamie Yang investigated the possibility of starting  
 3 Lodestone. They were introduced to TAC by Kennedy. Tam, Fong, and Yang (the  
 4 "Former Employees") repeatedly informed TAC and Kennedy that they were all  
 5 very dissatisfied with Activision's corporate culture and intended to leave the  
 6 company.

7 TAC and its officers did not believe that any of the information provided by  
 8 the Former Employees was trade secret information. They were unaware of the  
 9 terms of the Former Employees' contracts until early January 2007, just days before  
 10 the filing of this action.

11 TAC and its officers also contend that Activision did not sustain any damage  
 12 resulting from their actions even if the data provided by the Former Employees was  
 13 indeed trade secret information. In addition, TAC and its officers contend that  
 14 Activision is attempting to use this action and the injunctive power of the court to  
 15 obtain a competitive advantage over TAC in the video game peripheral market.

16 **II. Arrangements for Rule 26(a)(1) Initial Disclosures – Fed. R. Civ. P.  
 26(f)(1)**

17 The parties agree that each party will make its initial disclosures on or before  
 18 April 16, 2007. With respect to the timing, form or requirement for disclosures, the  
 19 parties do not believe that any changes need to be made.

20 **III. Subjects for Discovery – Fed. R. Civ. P. 26(f)(2)**

21 The parties generally discussed the subjects for discovery, as well as a  
 22 proposed discovery schedule. The general subjects on which Activision anticipates  
 23 it will need discovery include at least: (1) Defendants' infringement of Activision's  
 24 copyright; (2) Defendants' misappropriation of Activision's trade secrets and  
 25 confidential information; (3) the willfulness of Defendants' infringement and  
 26 misappropriation; (4) Defendants' disclosure and/or promotion of Defendants'  
 27 demo and the financial information associated therewith; (5) Activision's damages;

1 and (6) Defendants' contentions concerning its affirmative defenses, including all  
2 bases therefor.

3 Defendants Doug Kennedy and Reverb Communications anticipate that they  
4 will need discovery on, at least, the following topics: (1) identity of the specific  
5 information Activision contends is trade secret and stolen by Reverb and Mr.  
6 Kennedy; (2) the specific factual basis supporting Activision's contention that the  
7 subject information is, in fact, trade secret information; (3) the specific facts  
8 supporting Activision's contention that Reverb and/or Mr. Kennedy used or  
9 disclosed the subject information; and (4) the specific facts supporting Activision's  
10 contention that it suffered damage as a result of Reverb and/or Mr. Kennedy using  
11 or disclosing its trade secret information.

12 The TAC Defendants anticipate that they will need discovery on, at least, the  
13 following topics: (1) identity of the specific information Activision contends is  
14 trade secret; (2) the specific factual basis supporting Activision's contention that the  
15 subject information is, in fact, trade secret information; (3) the specific facts  
16 supporting Activision's contention that any Defendant used or disclosed the subject  
17 information; (4) the specific facts supporting Activision's contention that it suffered  
18 damage as a result of any act by TAC or its officers; 5) the terms of any settlements  
19 with defendants who have settled with Plaintiff; and 6) The Former Employees  
20 dissatisfaction with their employment and their prior attempts to obtain alternate  
21 employment.

22 Defendant Yang anticipates that she will need discovery on, at least, the  
23 topics listed by the TAC Defendants, Kennedy and Reverb.

24 The parties agree that discovery need not be conducted in phases, nor be  
25 limited to or focused upon particular issues. The parties did not agree on the date  
26 that discovery should be completed.

27

28 Activision's proposed discovery schedule is as follows:

1	Fact discovery cut-off:	<u>August 27, 2007</u>
2	Opening expert reports:	<u>September 10, 2007</u>
3	Rebuttal expert reports:	<u>October 1, 2007</u>
4	Expert discovery cut-off:	<u>November 12, 2007</u>
5	Last day to file dispositive motions:	<u>December 10, 2007</u>
6	Pretrial Conference:	<u>January 7, 2008</u>
7	Trial:	<u>February 11, 2008</u>

8  
9 Defendants' proposed discovery schedule is as follows:

10	Fact discovery cut-off:	<u>September 24, 2007</u>
11	Opening expert reports:	<u>October 8, 2007</u>
12	Rebuttal expert reports:	<u>October 29, 2007</u>
13	Expert discovery cut-off:	<u>December 10, 2007</u>
14	Last day to file dispositive motions:	<u>January 7, 2008</u>
15	Pretrial Conference:	<u>February 4, 2008</u>
16	Trial:	<u>March 10, 2008</u>

17  
18 **IV. Issues Relating to E-Discovery – Fed. R. Civ. P. 26(f)(3)**

19 With regard to disclosure or discovery of electronically stored information,  
20 the parties have generally discussed this issue and agree to exchange proposals and  
21 form a separate agreement regarding electronic discovery. This separate agreement  
22 will also describe the form in which the electronic discovery will be produced.

23 **V. Issues Relating to Claims of Privilege – Fed. R. Civ. P. 26(f)(4)**

24 The parties agreed on the procedure described in the Joint Stipulated  
25 Protective Order to assert claims of privilege or protection after production.

26 **VI. Changes to Discovery Limitations – Fed. R. Civ. P. 26(f)(5)**

27 The parties agreed that the depositions taken of experts and the depositions  
28 taken in the case thus far should not be counted against the limitation of ten (10)

1 depositions. Otherwise, the parties agree that no other changes should be made in  
 2 the limitations on discovery imposed under the Federal Rules of Civil Procedure,  
 3 and that no other limitations should be imposed, at this time.

4 **VII. Discovery Orders – Fed. R. Civ. P. 26(f)(6)**

5 In connection with their production of documents, the parties have already  
 6 stipulated to a joint protective order governing the disclosure and filing of  
 7 confidential information. The parties do not believe the Court should presently  
 8 enter any other orders under Rule 26(c) or under Rule 16(b) and (c).

9 **VIII. Matters Discussed Under Local Rule 26-1**

10 During the 26(f) meeting, the parties also discussed the items listed under  
 11 Local Rule 26-1.

12 A. **Complex Case – Local Rule 26-1(a)**

13 The parties agree that this is not a “complex case” and that the procedures of  
 14 the Manual for Complex Litigation need not be utilized.

15 B. **Motion Schedule – Local Rule 26-1(b)**

16 The parties anticipate filing one or more motions to dismiss and/or motions  
 17 for summary adjudication, but did not agree on a motion cutoff date.

18 C. **Settlement – Local Rule 26-1(c)**

19 A settlement has been reached as to Defendants John Tam and Corey Fong,  
 20 and a Consent Judgment and Permanent Injunction as to these defendants was filed  
 21 with this Court on March 26, 2007. The remaining parties are currently engaged in  
 22 settlement negotiations but have not agreed on material terms. Activision has  
 23 provided each of these Defendants with a draft Settlement Agreement and Consent  
 24 Judgment. Defendants Raymond Yow, Hong Lip Yow, TAC, Reverb  
 25 Communications and Doug Kennedy have proposed alternative Consent  
 26 Judgments.

27 The parties suggest that settlement procedure number four (4) from the  
 28 Court’s Scheduling Meeting of Counsel, namely “such other mechanism proposed

1 by the parties and approved by the court," should be utilized at the earliest  
2 practicable date.

3 D. Trial Estimate – Local Rule 26-1(d)

4 The parties preliminarily estimate that the time required for trial will be  
5 approximately 7 court days. The parties agree that the trial will be by jury.

6 E. Additional Parties – Local Rule 26-1(e)

7 The parties do not presently contemplate adding any parties.

8 F. Expert Witnesses – Local Rule 26-1(f)

9 The parties propose that expert witness reports under Fed. R. Civ. P. 26(a)(2)  
10 shall be made in accordance with the schedule as indicated above.

11 IX. Additional Matters Discussed Pursuant to Court's Order

12 In addition to the foregoing, the parties also discussed the following items  
13 pursuant to this Court's Scheduling Meeting of Counsel filed March 26, 2007.

14 A. A listing and proposed schedule of written discovery and depositions

15 Should the parties not settle this matter within the next few weeks, a more  
16 detailed schedule of written discovery will be discussed. Presently, Defendants  
17 propose taking the depositions of Charles Huang, John Tam, Corey Fong, Jamie  
18 Yang, and Mark Johnson. Activision does not foresee expanding the list of  
19 deponents to many more than those listed by defendants.

20 B. A listing and proposed schedule of law and motion matters

21 Defendants anticipate filing a motion for summary judgment on the copyright  
22 infringement, breach of contract, breach of duty of loyalty and fiduciary duty,  
23 interference with contractual relations, and interference with prospective economic  
24 advantage claims. Activision also expects to file a summary judgment motion, as  
25 well as a motion to strike the affirmative defenses asserted by defendants Yang,  
26 Hong Lip Yow, Raymond Yow and The Ant Commandos.

1       C. Any issues affecting the status or management of the case

2              The parties do not presently foresee any issues affecting the status or  
3              management of the case.

4       D. Proposals regarding severance, bifurcation or other ordering of proof

5              The parties do not anticipate issues on severance, bifurcation or ordering of  
6              proof, other than the possible bifurcation of Activision's punitive damages claim.

7       E. A statement of whether pleadings are likely to be amended

8              The parties agree that the pleadings are not likely to be amended.

9

10      Dated:     April 10, 2007

Respectfully submitted,  
JONES DAY

By:   
Robert W. Dickerson

14              Attorneys for Plaintiff  
15              ACTIVISION PUBLISHING, INC.  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 Dated: April 10, 2007  
2

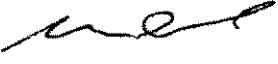
Respectfully submitted,  
WANG HARTMANN & GIBBS PC

3 By:  
4 Richard F. Cauley  
5

6 Attorneys for Defendant  
7 JAMIE YANG  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 Dated: April 10, 2007  
2

Respectfully submitted,  
OSWALD & YAP

3  
4 By:   
5 Michael A. Oswald

6 Attorneys for Plaintiff  
7 THE ANT COMMANDOS, INC.,  
8 HONG LIP YOW AND RAYMOND  
9 YOW

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 Dated: April 10, 2007

2  
3 Respectfully submitted,  
4  
5 SWEENEY, MASON, WILSON &  
6 BOSOMWORTH

7 By:

8  
9 Kurt E. Wilson  
10 Trevor Zink

11  
12 Attorneys for Defendants  
13 DOUG KENNEDY AND REVERB  
14 COMMUNICATIONS, INC.

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## PROOF OF SERVICE

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 555 S. Flower Street, 50<sup>th</sup> Floor, Los Angeles, California 90071.

On April 10, 2007, I caused to be served the foregoing document described as JOINT REPORT OF PARTIES PURSUANT TO FED. R. CIV. P. 26(F) on all other parties to this action addressed as follows:

Richard F. Cauley, Esq.  
Wang, Hartmann & Gibbs, PC  
1301 Dove Street, Suite 1050  
Newport Beach, CA 92660  
Facsimile: 949-833-2281  
E-mail: rcauley@whglawfirm.com

Kurt E. Wilson, Esq.  
Sweeney, Mason, Wilson & Bosomworth  
983 University Avenue, Suite 104C  
Los Gatos, CA 95032-7637  
Facsimile: 408-354-8839  
E-mail: [kwilson@smwb.com](mailto:kwilson@smwb.com)

Michael A. Oswald, Esq.  
Oswald & Yap  
16148 Sand Canyon Avenue  
Irvine, CA 92618  
Facsimile: 949-788-8980  
E-mail: mao@oswald-yap.com

X BY MAIL

I caused each such envelope to be deposited in the mail at Los Angeles, California. Each such envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.

EXECUTED on April 10, 2007 at Los Angeles, California.

**BY FEDERAL EXPRESS**

I caused each such envelope, with delivery fees provided for, to be served via Federal Express. I am "readily familiar" with the firm's practice of arranging envelopes to be delivered on an overnight basis by Federal Express. Federal Express will send its authorized courier to pick up envelopes which bear Jones Day's Federal Express Account Number at the firm's office in Los Angeles, California, and that thereafter Federal Express will deliver such sealed envelopes on an overnight basis in the ordinary course of business.

EXECUTED on April 10, 2007 at Los Angeles, California.

EXECUTED on April 10, 2007 at Los Angeles, California.

X BY FACSIMILE

I caused such document to be served via facsimile at the above-identified facsimile number, our telecopier confirming that the transmissions were received intact.

EXECUTED on April 10, 2007 at Los Angeles, California.

1        X **BY E-MAIL**

2        I caused such document to be served via e-mail at the above-identified e-mail  
addresses.

3        EXECUTED on April 10, 2007 at Los Angeles, California.

4        **BY PERSONAL SERVICE**

5        I caused each such envelope to be delivered by hand to the offices of the  
addressee(s)

6        EXECUTED on April 10, 2007 at Los Angeles, California.

7        X (Federal)      I declare that I am employed in the office of a member of the  
Bar of this Court at whose direction the service was made.

8        Frances Corrales  
9        Frances Corrales

8        Frances Corrales  
9        Signature

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 555 S. Flower Street, 50<sup>th</sup> Floor, Los Angeles, California 90071.

On September 6, 2007, I caused to be served the foregoing document described as CASE MANAGEMENT STATEMENT on all other parties to this action addressed as follows:

Michael A. Oswald, Esq.  
Oswald & Yap  
16148 Sand Canyon Avenue  
Irvine, CA 92618  
Facsimile: 949-788-8980  
E-mail: mao@oswald-yap.com

Kurt E. Wilson, Esq.  
Trevor J. Zink, Esq.  
Sweeney, Mason, Wilson & Bosomworth  
983 University Avenue, Suite 104C  
Los Gatos, CA 95032-7637  
Facsimile: 408-354-8839  
E-mail: [kwilson@smwb.com](mailto:kwilson@smwb.com)  
[tzink@smwb.com](mailto:tzink@smwb.com)

Yee-Horn Shuai, Esq.  
Shuai & Associates  
301 E. Colorado Boulevard, Suite 514  
Pasadena, CA 91101  
Facsimile: 626-405-0890  
E-mail: yhshuai@gmail.com

#### X BY E-MAIL

I caused such document to be served via e-mail at the above-identified e-mail addresses.

EXECUTED on September 6, 2007 at Los Angeles, California.

X (Federal) I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Gloria C. Perez  
Type or Print Name

Maria C. Perez  
Signature